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No. 90-1641

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In the Supreme Court of the United States

OCTOBER TERM, 1990

CANTRAL LESTER EARGLE, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether, in a prosecution for willful failure to file income tax returns, the district court improperly instructed the jury on whether a church set up by petitioner was exempt from taxation.

2. Whether a supplementary instruction regarding the effect of funds petitioner received from the church's assets improperly shifted to petitioner the burden of proving that the church was an exempt organization.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 921 F.2d 56.

JURISDICTION

The judgment of the court of appeals was entered on January 2, 1991. A petition for rehearing was denied on January 30, 1991. Pet. App. 12a-13a. The petition for a writ of certiorari was filed on April 25, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Eastern District of Texas, petitioner was convicted of willfully failing to file income tax

returns for 1981, 1982, and 1983, in violation of 26 U.S.C. 7203. The district court sentenced petitioner to a one-year term of imprisonment, five years of probation, and fines totalling $15,000. The court of appeals affirmed.

1. Petitioner is a medical doctor who was ordained as a minister in the Universal Life Church in 1979 and received a charter to establish a chapter of the church. He took a vow of poverty and purported to transfer all assets to the church. His lifestyle—which included membership in a country club, ownership of several automobiles, and ownership of a large personal residence—was inconsistent with a vow of poverty. Thursday night "church meetings" that his employees and family attended in his medical clinic closely resembled clinic staff meetings. Petitioner made deposits into a Swiss bank account during the time that he claimed all of his medical earnings went to the church. Finally, when he closed the church's bank accounts, he returned the "church funds" to his own personal accounts. Petitioner did not file income tax returns for 1981, 1982, or 1983. Pet. App. 2a-3a.

2. The district court instructed the jury on the elements of willfully failing to file an income tax return; the two elements in dispute were whether petitioner had a legal obligation to file a return and whether petitioner willfully failed to file a return. With respect to the element of willfulness, the court instructed the jury, in part, as follows:

> A Defendant's conduct in failing to file is not willful if he has a genuine misunderstanding of the tax laws. * * * You are instructed that if you find that the Defendant had a good faith belief that he was not required to file income tax returns, then you must find him not guilty on

> each of the counts involved. If the Defendant had a good faith belief that under a vow of poverty all the income received by the Universal Life Church Medical Clinic belonged to the church, then the defendant could not have acted willfully in failing to file tax returns and not reporting the income that you find that he had. * * *

Pet. App. 24a.

With respect to petitioner's legal obligation to file a return, the court instructed the jury that "[i]n order to be exempt from income taxes, an individual must have, in addition to taking a vow of poverty, must [*sic*] contribute all his assets and income to an organization which meets certain tests." Pet. App. 25a. After a detailed explanation of each of the three prongs of the test the jury should apply, the court instructed the jury as follows:

> [I]f you find beyond a reasonable doubt that the organization through which the Defendant claimed exemption was not organized or not operated exclusively for religious, charitable or educational purposes or any part of the organization's net earnings inure to the benefit of private individuals or the charter of the organization permitted the return of the organization's assets to any of its members or to private individuals if it was dissolved or the organization met or served a private as opposed to a public interest, *if the Government has proved any one of these beyond a reasonable doubt, then as a matter of law the Defendant is not exempt from income taxes.*

Pet. App. 26a-27a (emphasis added). Petitioner unsuccessfully objected to the italicized portion of the

instructions, arguing that the court had negated its willfulness instruction by stating that the defendant, rather than the church, would not be exempt if the government proved beyond a reasonable doubt that any prong of the exempt organizations test had not been met. Pet. App. 27a.

In response to other objections petitioner made to the charge on this element, the court gave a supplementary instruction on the effect of funds of the church inuring to the benefit of petitioner:

> [A]n exempt organization that does serve a public purpose rather than a private purpose must of necessity conduct its activities through individuals and may provide those individuals with personal living expenses and if *that is the situation and you are persuaded beyond a reasonable doubt existed in this case* [*sic*], then those living expenses provided do not constitute the inurement of the organization's net earnings to the private individual.

Pet. App. 28a-29a (emphasis added). Petitioner appears to have objected to the italicized portion of the instructions. Pet. C.A. Br. 35.

3. On appeal, petitioner contended that the instruction summarizing the exempt organization test negated the correctness and adequacy of the earlier willfulness instruction and that the supplementary instruction about public purposes and private inurement improperly shifted to petitioner the burden of meeting the exempt organization test. Pet. App. 4a, 6a.

With respect to the first argument, the court of appeals found no merit in petitioner's contention that the instruction on the tax-exempt status of the church might have confused or misled the jury about the

law governing the willfulness element. Pet. App. 5a. As to the second issue, the court of appeals held that, in context, the challenged instruction could not have misled the jury. The court observed that, viewed in isolation, the instruction might have tended "to mislead or confuse the jury because of a syntactical error." Pet. App. 6a. The court determined that the supplementary instruction did not constitute reversible error, however, in light of the trial court's repeated, specific, and correct instructions on the burden of proof. Pet. App. 6a-7a.

ARGUMENT

1. Petitioner first contends (Pet. 10-18) that the instruction on the "exempt organization" test effectively deprived him of his defense of lack of willfulness, and that the decision of the court of appeals upholding the instruction therefore conflicts with *Cheek* v. *United States*, 111 S. Ct. 604 (1991), and other decisions of this Court. His argument is meritless.

The indictment charged petitioner with failure to file income tax returns, in violation of 26 U.S.C. 7203. The elements of that offense are: (1) a legal obligation to file a return; (2) failure to file a return in a timely fashion; and (3) willfulness. *E.g.*, *United States* v. *Brodie*, 858 F.2d 492, 497 (9th Cir. 1988). The instruction to which petitioner objects addressed the first element of the offense—petitioner's legal obligation to file a return—and was not part of the court's instruction on willfulness. Because petitioner's theory on the first element was that he was exempt from taxes because he had contributed his income to an exempt organization, the court outlined to the jury the various circumstances under which an

organization would not be considered exempt, and then instructed the jury: "If the government has proved any one of these beyond a reasonable doubt, then as a matter of law the defendant is not exempt from income taxes." Pet. App. 26a-27a. In essence, the trial judge instructed the jury that, as a matter of law, petitioner had an obligation to file a return if the church to which he claimed he had dedicated his income did not meet the exemption requirements. Accordingly, this instruction had nothing to do with the willfulness element or the good-faith defense through which petitioner attempted to establish his lack of willfulness.

Petitioner does not claim that the "exempt organization" instruction was an incorrect statement of the law regarding the exemption element. Instead, he asserts that the instruction necessarily altered the burden of proof on the separate element of willfulness. In light of the clear instructions the court gave on willfulness, petitioner's argument is implausible. Those instructions advised the jury that "you must find [petitioner] not guilty" "if you find that [he] had a good faith belief that he was not required to file income tax returns," that petitioner "could not have acted willfully * * * [if he] had a good faith belief" that his income belonged to the church, and that this was "true even though a belief might have been mistaken or indisputably wrong, as long as the belief is found to be in good faith." Pet. App. 24a. There can be no doubt that the jury knew that petitioner did not act willfully if he acted pursuant to a good-faith belief in the lawfulness of his conduct.

Petitioner's reliance on this Court's recent decision in *Cheek* v. *United States*, 111 S. Ct. 604, 610-612 (1991), is misplaced. As required by *Cheek* and prior Fifth Circuit precedent, *United States* v.

Whiteside, 810 F.2d 1306, 1310-1311 (1987), the trial court's willfulness instruction specifically advised the jury to focus on petitioner's subjective intent, without regard to whether that intent was reasonable: "It's not necessary that the belief be reasonable. It can be unreasonable as long as it's held in good faith." Pet. App. 25a.

2. Petitioner also contends (Pet. 18-24) that an instruction given by the trial court impermissibly shifted to him the burden of proving that the church was exempt, rather than requiring the government to prove that the church was non-exempt.

The trial judge properly instructed the jury that the exemption claimed by petitioner would be inappropriate if "any part of the organization's net earnings inure to the benefit of private individuals" and that the government had the obligation to establish this beyond a reasonable doubt. Pet. App. 26a-27a. The trial court also "repeatedly informed the jury of the correct burden of proof, that the government had to prove every element of the offense beyond a reasonable doubt." Pet. App. 7a. Petitioner's argument is based on the supplementary instruction regarding the concept of "inurement." In that instruction, the court explained that an exempt organization that serves a public purpose may provide living expenses to individuals who conduct the organization's activities, and if "you are persuaded beyond a reasonable doubt [that situation] existed in this case," the living expenses do not constitute the inurement of the organization's net earnings to the private individual. Pet. App. 28a-29a.

We agree with the court of appeals that the suggestion that petitioner would have to prove beyond

a reasonable doubt that the expenses did not inure to petitioner's private benefit, "taken alone, might tend to mislead or confuse the jury." Pet. App. 6a. As the court of appeals also recognized, however, jury instructions "may not be judged in artificial isolation, but must be viewed in the context of the overall charge." *Cupp* v. *Naughten*, 414 U.S. 141, 146-147 (1973). A reviewing court must

> recognize that a judgment of conviction is commonly the culmination of a trial which includes testimony of witnesses, argument of counsel, receipt of exhibits in evidence, and instruction of the jury by the judge. Thus not only is the challenged instruction but one of many such instructions, but the process of instruction itself is but one of several components of the trial which may result in the judgment of conviction.

Id. at 147.

Inasmuch as the trial court explicitly instructed the jury that the government bore the burden of proof in the general instruction related to this element, and also instructed the jury repeatedly that the government bore the burden of proof on every element, the court of appeals was correct in concluding that the challenged instruction was not reversible error. In any event, there is no reason to believe that the court of appeals misunderstood the appropriate standard, or has developed a standard that conflicts with the standards applied by other courts of appeals, or that an examination of the issue in this particular context would resolve any legal question of general significance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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